Supreme Court of the United States

OCTOBER TERM, 1948

No. 437

BENJAMIN JOSEPH MILES and
MYRTLE LETT MILES,
Petitioners,
vs.
THE UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION

FITZGERALD, WALKER, CONLEY & HOPPING,
LOUIS M. HOPPING,
2256 Penobscot Building,
Detroit 26, Michigan,
Counsel for Petitioners.

PETER L. LaDUKE,
2256 Penobscot Building,
Detroit 26, Michigan,
Of Counsel.

Interstate Brief & Record Co., 170 East Larned St., Detroit 26, Michigan

SUBJECT INDEX

PETITION

BRIEF

INDEX TO AUTHORITIES CITED

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, Benjamin Joseph Miles and Myrtle Lett Miles, pray for issuance of a writ of certiorari to the United States Court of Appeals for the Sixth Circuit, for the purpose of reviewing a decision of that court affirming, without opinion, on October 14, 1948, the verdicts of conviction of petitioners on April 16, 1947, and sentences on May 16, 1947, in the United States District Court for the Eastern District of Michigan, Southern Division.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Petitioners were convicted of conspiracy to knowingly persuade, induce, entice and cause to be persuaded, induced and enticed and to aid and assist in persuading, inducing and enticing, a certain girl to-wit, Loretta Ann McDonald, to go from Detroit, Michigan in the Eastern District of Michigan, to the City of Columbus, in the State of Ohio, the same being in interstate commerce for the purpose of prostitution, and did thereby knowingly cause the said Loretta Ann McDonald to go and be carried and transported from Detroit, Michigan to Columbus, Ohio, as a passenger upon the line and route of a common carrier in interstate commerce in violation of Title 18, United States Code, section 88 (now Title 18, United States Code, section 371), conspiracy to commit offense against the United States. That statute provided as follows:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand ($10,000) dollars, or imprisoned not more than two years, or both."

The indictment (R. 1-4) named two other persons as defendants, Ronald Woodling, alias Ronald Bradley, (which name is the one usually appearing in the record), and Kay Woodling, alias Kay Nordberg, and a fifth party, Frank (Peck) Glassman, as a co-conspirator but not co-defendant. None of those parties have joined in this petition.

Petitioners were not named as defendants in Count I (R. 1). Count II (R. 1-3) is the conspiracy charge on which petitioners were convicted. Count III (R. 3-4) states the substantive offense. The trial court granted a motion to acquit petitioners on that Count (R. 56-7). However, the convictions were for conspiracy to commit the offense stated therein, *e. g.*, violation of Title 18 United States Code, section 399 (now Title 18, United States Code, section 2422), white slave traffic, inducing transportation for immoral purposes, which reads:

> "Any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any territory or the District of Columbia, shall be deemed guilty * * *."

A motion to strike all evidence introduced against petitioners and for a judgment of acquittal was denied (R. 56-58). The ground for the motion was that the substantive offense and the conspiracy were completed, prior to the occurrence of any acts or declarations of petitioners allegedly connecting them with the conspiracy.

The court in the course of a rather long charge to the jury, among other instructions, charged them in these particular words:

(R. 66) "Now, the offense that the Government charges in this conspiracy is the violation, against the defendant Ronald Woodling, or Ronald Bradley, of Section 398, the transportation element; and against all four defendants, a conspiracy to violate Section 399, inducing the transportation for immoral purposes, as I described it to you. That is the first element, an object to be accomplished. The object to be accomplished was the violation of this law, Section 399, insofar as this conspiracy is concerned; the inducing or enticing of this girl by the defendant or aiding and abetting by them to make this trip, as described, for the purposes described."

(R. 68) "Now, as to the duration of a conspiracy: The law is that once a conspiracy is shown to exist, which in its nature is not ended merely by end of time, it continues to exist until consummated or until the accomplishment of the object of it. No general rule of law can be accurately laid down touching when accomplishment has been achieved. It follows, therefore, that this question is one well nigh wholly of fact, of fact to be resolved by common sense and human observation and experience, and largely each category must be weighed in its own facts."

(R. 85) "The second count is a conspiracy charge. You can find all of the defendants guilty. Your verdict can be that they are all guilty; or none guilty; or that two or more are guilty."

(R. 75) "Criminal intent may be implied from the act, conduct, declarations or admissions of any of the defendants. Considered in relation to the charge made, they may establish criminal intent."

(R. 74) "While you may show what a man does by direct evidence of eye witnesses, the only way

you can show what he intends or believes or what his plans or purposes are, or were, is by circumstantial evidence."

(R. 77) "And the fact that there was some testimony in the case here that Loretta Ann McDonald freely went of her own will, and so on, that makes no difference, even though she did go freely of her own will you should find if all the other elements of the offense have been proved beyond a reasonable doubt, as I have explained to you, and she might have consented, it makes no difference as to the guilt or innocence in this case. Or the fact that, if you should find that Loretta Ann McDonald has signified a willingness or wanted to go to Columbus, that would not make any difference."

The jury returned verdicts of guilty as to all defendants on the counts which were not dismissed (R. 5).

Notice of appeal (R. 8) and assignments of error (R. 9-11) were filed by petitioners, and the judgments and convictions were affirmed, without opinion, by the United States Court of Appeals for the Sixth Circuit on October 14, 1948 (R. 95). This Court granted an extension of time to and including November 30, 1948, in which to file a petition for writ of certiorari.

What is now involved are the judgments of the appellate court in affirming certain rulings of the trial court and in sanctioning the manner of charging the jury on vital elements of the offense.

The rulings were:

(1) That the conspiracy had not terminated when the woman transported had crossed the state line, which was prior to the occurrence of any acts or declarations of petitioners allegedly connecting them with the conspiracy; and

(2) That the evidence against petitioners, which was of activities and declarations after the woman transported had crossed the state line, was sufficient as a matter of law to present a question for the jury as to whether or not petitioners had joined and participated in the conspiracy.

Those rulings, and their affirmances on appeal decided federal questions in a way probably in conflict with applicable decisions of this Court.

The objectionable features of the charge are set forth *supra*. In sustaining their correctness a federal question was decided in a way probably in conflict with applicable decisions of this Court, and resulted in a violation of the minimum standards of clarity and conciseness necessary to insure a fair trial as defined by this Court.

JURISDICTION TO REVIEW THE JUDGMENT

Jurisdiction to issue a writ of certiorari to the United States Court of Appeals for the Sixth Circuit and to review the judgment is conferred on this Court by Title 28, United States Code, section 1254, as follows:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after the rendition of judgment or decree;"

This was a criminal prosecution, (Indictment, R. 1-4) for violation of Title 18, United States Code, section 88 (now Title 18, United States Code, section 371), conspiracy to commit offense against the United States. The offense specified (set out in Count III of the Indictment R. 3-4) was violation of Title 18, United States Code, section 399

(now Title 18, United States Code, section 2422), white slave traffic, inducing transportation for immoral purposes. Petitioners were convicted and sentenced in the trial court (R. 5-7), and the same were affirmed upon appeal to the United States Court of Appeals for the Sixth Circuit on October 14, 1948, without opinion (R. 95). That opinion was a final judgment. An extension of time to and including November 30, 1948 was granted by this Court for the filing of this petition.

The appellate court, in affirming the rulings of the trial court and the correctness of portions of the charge to the jury, which are the questions presented in this petition, decided federal questions in a way probably in conflict with applicable decisions of this Court (Supreme Court Rule 38 (5) (b)).

The questions presented also raise important issues in the administration of the federal criminal laws. *Ballard v. U. S.*, 329 U. S. 187, 67 S. C. 261, 91 L. E. 181; *Bihn v. U. S.*, 328 U. S. 633, 66 S. C. 1172, 90 L. E. 1485.

QUESTIONS PRESENTED

1. Whether there was error in the appellate court's affirmance of the trial court's ruling that the conspiracy had not terminated and been completed at the instant the woman transported had crossed the Michigan-Ohio line; which crossing had taken place prior to the occurrence of any acts or declarations of petitioners allegedly connecting them with the conspiracy; and that therefore a conspiracy existed which could be joined.

This question was raised in the trial court by objections to the introduction of evidence which appear at pages 14, 15, 17, 18, 29, 31, 32, 48, 50, 54, 56, 57 and 58 of the record,

and by a motion to strike all evidence against petitioners and for a judgment of acquittal (R. 56).

On appeal, the points relied on (R. 9-11) raised the issue in the Court of Appeals. The Court of Appeals, in affirming the judgments without opinion, stated that no error existed in the proceedings (R. 95).

2. Whether there was error in the appellate court's affirmance of a ruling by the trial court that the evidence against petitioners, which was of activities and declarations of the petitioners after the woman transported had crossed the state line, was sufficient as a matter of law to present a question for the jury as to whether or not petitioners had joined and participated in the conspiracy charged.

This question was raised in the trial court by objections to the introduction of evidence which appear at pages 14, 15, 17, 18, 29, 31, 32, 48, 50, 54, 56, 57 and 58 of the record, and by a motion to strike all evidence against petitioners and for a judgment of acquittal (R. 56).

On appeal, the points relied on (R. 9-11) raised the issue in the Court of Appeals. The Court of Appeals, in affirming the judgment without opinion, stated that no error existed in the proceedings (R. 95).

3. Whether the appellate court's sanctioning of the manner of charging the jury on vital elements of the offense, which (1) omitted reference at a crucial point to the requirement of transportation by common carrier, (2) charged that there is no rule of law governing the question of how long a conspiracy continues, (3) failed to charge that one defendant alone could be guilty on the conspiracy count, (4) stated that the declarations and conduct of any of the conspirators are competent to prove criminal intent on the part of all the conspirators, and

(5) instructed that though the woman may have made the interstate trip of her own free will, it made no difference as to the guilt or innocence of the accused, violated the minimum standards of correctness, clarity, and conciseness necessary to insure a fair trial.

The errors included in this question have been properly saved for consideration here. The portions of the charge involved appear at pages 66, 68, 85, 75, 74 and 77 of the record, respectively.

The attention of the trial court was called to the element of transportation by common carrier (R. 86-7). On the second point the trial court had repeatedly rejected petitioners' arguments that the conspiracy had terminated as a matter of law (R. 31, 32, 50, 56). Numbers three and five are points 10 and 9, respectively, of the points relied on for appeal (R. 10). Number 4 is in the same class as number two. After repeated objections to the competence of items of evidence and a motion to strike and for judgment of acquittal (R. 56-8) the trial court's mind was fixed, and it would have been useless to further except specifically to this and other parts of the charge.

The appellate court, in affirming the judgments without opinion, stated that no error was apparent on the record (R. 95).

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. The rulings of the courts set forth in the "Questions Presented" in this petition, decided federal questions in a way probably in conflict with the applicable decisions of this Court in *Fiswick v. U. S.*, 329 U. S. 211, 67 S. C. 224, 91 L. E. 196; *Bihn v. U. S.*, 328 U. S. 633, 66 S. C. 1172, 90 L. E. 1485; *Bollenbach v. U. S.*, 326 U. S. 607, 66 S. C. 402, 90 L. E. 350; *U. S. v. Falcone*, 311 U. S. 205, 61 S. C. 204, 85 L. E. 128; *U. S. v. Kissel*, 218 U. S. 601, 31 S. C. 124, 54 L. E. 1168; *Brown v. U. S.*, 150 U. S. 93, 14 S. C. 37, 37 L. E. 1010; *Logan v. U. S.*, 144 U. S. 263, 12 S. C. 617, 36 L. E. 429; and *U. S. v. Irvine*, 98 U. S. 450, 25 L. E. 193.

This was a criminal prosecution, for conspiracy, under Title 18, United States Code, section 88 (now Title 18, United States Code, section 371) to violate Title 18, United States Code, section 399 (now Title 18, United States Code, section 2422), white slave traffic, inducing transportation for immoral purposes.

The errors which petitioners contend are grounds for reversal by this Court concerned whether the conspiracy to transport the woman involved terminated when she crossed the state line, the type and quantum of proof which as a matter of law will constitute a jury question, where the first contact of petitioners with the other conspirators or with the woman transported was after she had crossed a state line, and whether due to certain errors in the charge to the jury it met the minimum standards of clarity, correctness and conciseness required in a trial of this type.

Those rulings decided federal questions within the meaning of Supreme Court Rule 38 (5) (b). *Fiswick v. U. S., supra; Cleveland v. U. S.*, 329 U. S. 14, 67 S. C. 13, 91 L.

E. 12; *U. S. v. Sheridan*, 329 U. S. 379, 67 S. C. 332, 91 L. E. 359.

Petitioners believe that the principles of the above cases, properly applied, would produce a contrary result.

2. The rulings of the courts, below, set forth in the "Questions Presented" in this petition, present important questions in the administration of federal criminal procedure.

Those rulings, on the time of termination of the conspiracy, where the only evidence implicating petitioners was concerning matters that occurred after the woman transported had crossed the state line, on the sufficiency of the proofs to raise a jury question, where there was no contact whatsoever between petitioners and the other conspirators or the woman involved until she had crossed the state border, and on the requirements of clarity, correctness and conciseness of the charge to the jury are matters of general interest and of vital importance in the enforcement of the conspiracy statute.

Such is a sufficient reason for allowance of the writ. *Bollenbach v. U. S., supra; Bihn v. U. S., supra; Ballard v. U. S., supra.*

PRAYER

Wherefore, petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Sixth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and proceedings of said cause, numbered and entitled in its docket No. 10,611, Benjamin Joseph Miles and Myrtle Lett Miles v. United States of America, to the end that said cause may be reviewed and determined by this court, and that the judgment of the United States Court of Appeals for the Sixth Circuit be reversed, and for such further relief as this court may deem proper.

Respectfully submitted,

FITZGERALD, WALKER, CONLEY
& HOPPING,

By.....

LOUIS M. HOPPING,
2256 Penobscot Building,
Detroit 26, Michigan,
Counsel for Petitioners.

PETER L. LaDUKE,
2256 Penobscot Building,
Detroit 26, Michigan,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1948

No.....

BENJAMIN JOSEPH MILES and
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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Subject Index Appears on First Page.

Index to Authorities Cited appears on second page.

OPINIONS OF THE COURTS BELOW

The proceedings in the District Court of the United States for the Eastern District of Michigan, Southern Division were begun by indictment (R. 1-4) and docketed as criminal case Number 29,248. The verdict of the jury filed April 16, 1947 (R. 5), and the judgments and sentences filed May 16, 1947 (R. 6-7), were not reported.

The appeal to the United States Court of Appeals for the Sixth Circuit was docketed as case number 10,611. The judgment affirming the convictions without opinion, filed October 14, 1948, has not been reported.

GROUNDS FOR JURISDICTION

The date of the judgment of the United States Court of Appeals for the Sixth Circuit for which review is sought was October 14, 1948 (R. 95). That opinion was a final judgment. An extension of time to and including November 30, 1948 was granted by this Court within which to apply for a writ of certiorari. (Supreme Court Rule 38 (2); Rules of Criminal Procedure 37 (b) (2)).

This was a criminal prosecution (Indictment, R. 1-4), for violation of Title 18 United States Code, section 88 (now Title 18, United States Code, section 371), conspiracy to commit offense against the United States. The offense specified (set out in Count III of the Indictment R. 3-4), was violation of Title 18 United States Code, section 399 (now Title 18, United States Code, section 2422), white slave traffic inducing transportation for immoral purposes. (The statutes are set forth *supra* in the petition pp. 2-3.) Petitioners were convicted and sentenced in the trial court on the conspiracy count (R. 5-7), after the substantive count was dismissed (R. 56-7). The United States Court of Appeals for the Sixth Circuit affirmed the proceedings, without opinion (R. 95).

Jurisdiction for issuance of a writ of certiorari to that court to review the judgment is conferred on this Court by Title 18, United States Code, section 1254, which provides:

"Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

Review is sought because the appellate court, by its judgment without opinion, affirmed certain rulings of the trial court and sanctioned the manner of instructing the jury on vital elements of the offense.

The rulings were:

(1) That the conspiracy had not terminated when the woman transported had crossed the state line, when the crossing had taken place prior to the occurrence of any acts or declarations of petitioners allegedly connecting them with the conspiracy; and,

(2) That the evidence against petitioners, being acts and declarations occurring after the woman transported had crossed the state line, was sufficient as a matter of law to present a question for the jury as to whether or not petitioners had joined the conspiracy.

These questions were raised in the trial court by objections to the introduction of evidence which appear at pages 14, 15, 17, 18, 29, 31, 32, 48, 50, 54, 56, 57, and 58 of the record, and by a motion to strike all evidence against petitioners and for a judgment of acquittal (R. 56).

On appeal, the issues were raised in the points relied on (R. 9-11). The Court of Appeals, in affirming the judgments without opinion, stated that no error existed in the proceedings (R. 95).

Therefore the questions have been properly saved for consideration by this Court.

The objectionable features of the charge are set forth *supra,* in the petition, (pp. 4-5).

The instructions are erroneous because, respectively; (1) reference to the statutory requirement of transportation by common carrier was omitted at a crucial point; (2) the jury was charged that there is no rule of law governing the duration of a conspiracy; (3) under the language of the indictment (R. 3-4) one defendant alone could have been found guilty of conspiracy; (4) it was stated, without qualification, that the declarations and conduct of any one of the conspirators were competent and admissible against all to prove criminal intent, and (5) the jury was foreclosed from considering whether the circumstances of the woman's leave-taking had any bearing on the defendants' criminal intent.

The errors have been properly saved for consideration by this Court.

The portions of the charge appear in the record at pages 66, 68, 85, 75 and 77, respectively.

The attention of the trial court was called to the lack of instruction on the element of transportation by common carrier (R. 86-7). On the second point, the trial court had repeatedly rejected petitioners' arguments that the conspiracy had terminated as a matter of law prior to the occurrence of any events allegedly connecting petitioners to the offense (R. 31, 32, 50 and 56). Numbers three and five are points 10 and 9, respectively, of the points relied on for appeal (R. 10), and were fixed and ultimate conclusions of the trial court. Number four is in the same class as number two. After repeated objections to the competence of items of evidence appearing throughout the record, and denial of the motion to strike and for judgment of acquittal (R. 56-8), petitioners had done all that could be expected of them to raise the issues.

The appellate court found no error on the record, in affirming the judgments, without opinion (R. 95).

The appellate court, in affirming the rulings of the trial court above referred to and by refusing to hold that the charge to the jury violated the minimum standards of correctness, conciseness and clarity necessary for a fair trial, decided federal questions in a way probably in conflict with applicable decisions of this Court (Supreme Court Rule 38 (b) (2)).

Those cases are *Fiswick v. U. S.*, 329 U. S. 211, 67 S. C. 224, 91 L. E. 196; *Bihn v. U. S.*, 328 U. S. 633, 66 S. C. 1172, 90 L. E. 1485; *Bollenbach v. U. S.*, 326 U. S. 607, 66 S. C. 402, 90 L. E. 350; *U. S. v. Falcone*, 311 U. S. 205, 61 S. C. 204, 85 L. E. 128; *U. S. v. Kissel*, 218 U. S. 601, 31 S. C. 124, 54 L. E. 1168; *Brown v. U. S.*, 150 U. S. 93, 14 S. C. 37, 37 L. E. 1010; *Logan v. U. S.*, 144 U. S. 263, 12 S. C. 617, 36 L. E. 429; and *U. S. v. Irvine*, 98 U. S. 450, 25 L. E. 193.

The rulings decided federal questions and adequate grounds exist for allowance of the writ. *Fiswick v. U. S., supra; Cleveland v. U. S.*, 329 U. S. 14, 67 S. Ct. 13, 91 L. E. 12; *U. S. v. Sheridan*, 329 U. S. 379, 67 S. C. 332, 91 L. E. 359.

The matters are in addition, substantial errors which, denied fundamental rights of petitioners, and are matters of general interest and vital importance in the enforcement of the federal criminal laws. This supplies a further grounds for allowance of the writ. *Ballard v. U. S.*, 329 U. S. 187, 67 S. C. 261, 91 L. E. 181; *Bihn v. U. S., supra; Bollenbach v. U. S., supra.*

Therefore this Court has jurisdiction to grant a writ of certiorari as prayed.

STATEMENT OF THE CASE

The contents of the "Summary Statement of the Matter Involved," *supra*, pp. 2-6 of the petition for writ of certiorari are adopted and made a part of this section. The material below is supplementary thereto.

The woman involved in the transportation was named Loretta Ann McDonald (Indictment, R. 1-4). She was commonly called Billie.

Defendant Ronald Woodling (alias Ronald Bradley, the name generally used in the record) had arranged for her to enter into a life of prostitution (R. 13 and 20-29). A couple of days before October 2, 1946, she had expressed a desire to leave Detroit (R. 26), and wished him to arrange the trip.

On Wednesday, October 2, 1946, he told her she was going to Columbus, Ohio the next day (R. 15 and 26). That night he gave her ten dollars for train fare and a slip of paper with the address of petitioner Benjamin Miles, a phone number, and a notation "I'm Billie. Peck sent me," thereon (R. 15-16).

Bradley picked up Billie about 10:30 the following morning, Thursday, October 3, 1946, and after eating breakfast they went to the Michigan Central Depot in Detroit. Bradley and Billie remained at the station until 1:00 P. M., when Billie got on the train for Columbus (R. 16).

She arrived in Columbus, Ohio about 6:30 P. M. of that day (R. 15 and 26), and went by cab to the home of petitioners (R. 16, 51 and 52).

Upon arriving there she announced her name to Myrtle Miles (R. 51 and 52). Benjamin Miles told Billie he had not expected her until later (R. 16 and 52).

Petitioners operated a house of prostitution at the address. Billie worked there as a prostitute for a short time (R. 18).

The fourth defendant, Kay Woodling (alias Kay Nordberg, which is the name generally appearing in the record) was previously acquainted with Ronald Bradley, and with Frank (Peck) Glassman, who was named as a co-conspirator but not co-defendant, and who was a witness for the government.

Around the first of October, 1946, Kay Nordberg met Frank Glassman in Columbus, Ohio (R. 36). She came in on Sunday night (R. 36 and 43), which was probably September 29, 1946, and left on Tuesday, October 1, 1946, for Detroit.

On the day she left for Detroit, she told Glassman that she would like to place a girl for Ronnie, and preferred that she go to the house of prostitution operated in Columbus, Ohio by petitioners (R. 36). Kay Nordberg apparently knew of the place and either she or Ronnie knew the address because he gave it to Billie the following evening, October 2, 1946 (R. 15-16). Glassman knew Benjamin Miles but not the address of his place, and didn't learn the address until the following day (R. 35 and 37), which was Thursday, October 3, 1946, the day Billie arrived in Columbus.

On Tuesday evening, after her arrival in Detroit, Kay Nordberg called Glassman and asked him to contact petitioner Benny Miles with reference to placing the girl for Bradley (R. 36). He agreed to call Miles (R. 36).

Glassman's testimony does not establish the date or time, but he called petitioner Benjamin Miles after getting the phone number from a cab driver (R. 37, 51 and 52). Glassman said that a girl from Detroit named Kay

had called and said she would like to place a girl (R. 37, 51 and 52). He didn't tell Miles where the girl was from (R. 52). Glassman had never before had anything to do with placing a girl in a call house (R. 38) and didn't know who this girl was (R. 39).

Benny Miles said to send the girl, because there was always an opening for one (R. 37 and 52).

About half an hour later Kay Nordberg called Glassman and he told her that Miles had said his house could use a girl.

Statements given the Federal Bureau of Investigation by petitioners on February 28, 1947 were put in evidence by the government at the trial (R. 50-53). That given by Benjamin Miles establishes (R. 52) that the call from Glassman came on the same afternoon that Loretta McDonald arrived at the Miles home, and only a short time before her arrival. She was expected much later.

One-half hour later Kay Nordberg made the call to Glassman above referred to. There is no evidence of Kay having thereafter contacted Bradley, who had been at breakfast and at the train station with Billie between 10:30 A. M. and 1:00 P. M.

The charge to the jury limited their consideration (R. 82) to evidence of events occurring between October 1 and October 3, 1946. But it was not specified what evidence was thereby excluded from their consideration.

A great deal of evidence of events long before and after the duration of the alleged conspiracy had been previously admitted against repeated objections by petitioners. In some cases the trial court stated that the subjects would be properly treated in the charge (R. 14, 15 and 50).

SPECIFICATION OF ASSIGNED ERRORS

1. The appellate court erred in affirming the trial court's ruling that the conspiracy had not terminated at the instant the woman transported crossed the Michigan-Ohio line, and that therefore the conspiracy continued to the time of the acts and declarations of petitioners allegedly connecting them therewith.

2. The appellate court erred in affirming the ruling of the trial court that the evidence against petitioners, which consisted of acts and declarations occurring after the woman transported had crossed the state line, was sufficient as a matter of law to present a question for the jury as to whether petitioners had joined the conspiracy.

3. The appellate court, by affirming the trial court's judgment's without opinion, erroneously sanctioned the manner of charging the jury, which (1) omitted reference at a crucial point to the requirement of transportation by common carrier, (2) charged that there is no rule of law governing the question of how long a conspiracy continues, (3) failed to charge that one defendant alone could be found guilty on the conspiracy count, (4) stated, without qualification, that the declarations and conduct of any of the conspirators are competent to prove criminal intent on the part of any or all of the conspirators, and (5) instructed that though the woman may have made the interstate trip of her own free will, it made no difference as to the guilt or innocence of the accused.

ARGUMENT

SUMMARY

The United States Court of Appeals for the Sixth Circuit, by affirming the judgment of the trial court, erred in its rulings regarding the duration of the conspiracy charged and the sufficiency of the evidence as to petitioners' connection with the offense, and by sanctioning the manner in which the jury was instructed.

All elements of the offense were completed prior to the occurrence of any acts or declarations of petitioners connecting them therewith. The conspiracy contemplated but one act, the interstate transportation of a woman for purposes of prostitution. The offense was complete when she crossed the state line. The appellate court erroneously applied rules of law respecting conspiracies of a continuing nature, where a series of acts is necessarily involved.

Irrespective of whether that ruling was correct, there was further error in the appellate court's affirmance of the trial court's ruling that there was sufficient evidence respecting participation in the conspiracy by petitioners to present a question for the jury.

There was no evidence connecting petitioners to the conspiracy until after the woman transported had crossed the state line. The record affirmatively shows that they did not know the girl or where she was from.

This ruling was particularly prejudicial because a great deal of extraneous evidence was heard by the jury, and the effect of it could not be eradicated by the manner in which the jury was charged.

Further error was committed by the appellate court in sanctioning the manner of charging the jury at five vital points.

A writ of certiorari should issue as prayed because the rulings and the sanctioning of the manner of giving the charge decided federal questions in a way probably in conflict with applicable decisions of this court. A further reason exists in that substantial questions are presented which are of general public interest and important matters respecting the enforcement of the federal criminal laws.

1. **THE RULING THAT THE CONSPIRACY HAD NOT TERMINATED AT THE INSTANT THE WOMAN TRANSPORTED HAD CROSSED THE STATE LINE, BUT CONTINUED UNTIL THE TIME OF THE ACTS AND DECLARATIONS OF PETITIONERS ALLEGEDLY CONNECTING THEM THEREWITH, DECIDED A FEDERAL QUESTION IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, AND PRESENTS AN IMPORTANT QUESTION IN THE ADMINISTRATION OF THE FEDERAL CRIMINAL LAWS.**

The first contact between the other named conspirators and petitioners was the phone call from Glassmon (R. 37 and 52). His testimony does not establish the date or time of the call. The statement of petitioner Benjamin Miles shows that the call was made on the evening the girl arrived (R. 52). She left Detroit at 1:00 P.M. and arrived in Columbus at 6:30 P.M., and took a cab to the Miles residence (R. 16, 26, 51 and 52). Therefore she did not appear at the Miles home until sometime after 6:30 P.M. October 3, 1946, which was long before she was expected (R. 52).

The government put in evidence the statement of Benjamin Miles and is bound by its contents, at least as to matters not otherwise controverted.

The evidence conclusively shows that Loretta McDonald had crossed the Michigan-Ohio line prior to the first contact between petitioners and the other conspirators. Judicial notice should be taken that the travel time from Detroit to the state line is about an hour.

This was not a continuing type of conspiracy requiring a series of acts, which would continue until abandonment or withdrawal of the participants. Only one act was involved, e.g., transportation of a woman across a state line.

As said in *Hyde v. U. S.*, 225 U. S. 347, 32 S. C. 793, 56 L. E. 1114:

> "The distinction is vital and has different consequences and incidents. * * * The conspiracy accomplished or having a distinct period of accomplishment differs from one that is to be continuous."

The situation is governed by the principles of such cases as *Fiswick v. U. S., Bollenbach v. U. S., U. S. v. Kissel, Brown v. U. S., Logan v. U. S.* and *U. S. v. Irvine,* all *supra.*

In the Fiswick case the offense was the filing of false alien registration statements. It was held that the conspiracy terminated on the filing of the last statement.

Bollenbach v. U. S., supra, held that a party did not become a member of the conspiracy to transport securities where the substantive offense was completed.

U. S. v. Kissel, supra, held that while a conspiracy is not co-existent solely with its formation, it terminates upon its abandonment or success.

The Brown and Logan case involved murders and the Irvine case a wrongful witholding of funds. All held that

the offense being a single act and not a series of acts, the conspiracy terminated upon completion of the offense.

These are applicable decisions because they all deal with conspiracies to commit offenses which by their nature are completed upon the doing of a single act. Here the act was transportation of a woman across a state line. At that instant all the elements of the offense were completed, as the narrative of facts above conclusively demonstrates. All the acts occurred prior to any contact with petitioners, and their participation was not a necessary element of the conspiracy. There was sufficient showing as to the intent of Bradley and Woodling to transport the girl for purposes of prostitution whether or not she ever went to the Miles home. For instance, Bradley knew Bobbie Adams who operated another call house in Columbus, to where he later took the girl (R. 47-8).

The above decisions of this Court were probably misapplied because they all hold that where a non-continuous conspiracy is involved the completion of the substantive offense marks the termination point of the conspiracy; and since a federal statute was involved this was clearly a federal question.

The ruling is one of general interest and substantial rights of petitioners are involved. This is so because it is important to settle how far the conspiracy net may be spread to draw accused persons within its folds.

2. THE RULING THAT THE EVIDENCE RESPECTING THE ACTS AND DECLARATIONS OF PETITIONERS ALLEGEDLY CONNECTING THEM WITH THE CONSPIRACY WAS SUFFICIENT AS A MATTER OF LAW TO PRESENT A QUESTION FOR THE JURY DECIDED A FEDERAL QUESTION IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, AND PRESENTS AN IMPORTANT QUESTION IN THE ADMINISTRATION OF THE FEDERAL CRIMINAL LAWS.

The first contact between petitioners and the other defendants was the phone call from Glassman (R. 37, 51 and 52). That and the arrival of Billie at the Miles home, and her agreeing to work there represents the whole of the evidence respecting petitioners' connection to the conspiracy.

There was testimony that the girl was taken to the doctor (R. 16, 32-4, 53 and 58) for an examination, that she had a quarrel with one of the girls in the house (R. 53) and that another girl from Detroit was there (R. 17-18). The admission of that testimony was damaging and prejudicial, and designed to bolster a weak case. It was not cured by a simple statement that the jury was limited to considering only events occurring between October 1 and 3, 1946 (R. 82). For instance, immediately before the charge was given the court overruled with finality the objection to the medical report (R. 58). The record contains much other evidence of the same nature and objections thereto.

Therefore, the question of whether the evidence as a matter of law presented a jury question was of utmost importance in this case.

The call from Glassman came long after the girl Billie was on her way to Columbus (R. 52). A holding that the conspiracy was not then ended and further that petition-

ers joined the conspiracy and became liable for all of its consequences is an interpretation of the conspiracy statute which probably misapplies applicable decisions of this Court, *supra*, and has serious and important consequences in the administration of federal criminal procedure.

It is important to distinguish this situation from one where a party has joined a conspiracy and the question is whether he shall be responsible for certain subsequent acts, such as in *Pinkerton v. U. S.*, 328 U. S. 640, 66 S. C. 1180, 90 L. E. 1489.

Whatever presumptions may obtain there do not apply here, where the questions are whether or not a conspiracy was in existence at the time the particular acts occurred, and, secondly, if it had not terminated, whether the acts and declarations as a matter of law were sufficient to make a question for the jury as to whether the conspiracy was joined.

The decisions of this Court have established that conspiracies such as the one here, contemplating a single offense, do have, as a matter of law definite starting and termination points. The principle was established in the Fiswick, Bollenbach, Kissel, Brown, Logan and Irvine cases, as pointed out in the discussion under the first Specification of Error, *supra*.

A further question in the Bollenbach case, *supra;* was whether the acts of the defendant could in any event constitute joinder of the conspiracy. He had assisted in the disposal of stolen securities after their interstate transportation. It was held that knowledge of the conspiracy and of intention to enter the criminal partnership had not been proven.

Here the testimony of Glassman (R. 37) definitely establishes that petitioners did not know who the girl was

or where she was from. Admittedly she worked as a prostitute at the Miles home. But that was no federal offense. Petitioners are in the same position as the defendant Bollenbach, and the law of that case is directly applicable here.

U. S. v. Falcone, supra, is likewise an applicable decision of this Court on the question of whether or not as a matter of law a conspiracy was joined. Falcone sold material to a group of still operators, probably with knowledge the supplies would be used in illicit distilling. It was held that he did not thereby become a party to the conspiracy, though his conduct may have furthered the objects of the same.

The rule there governs here: petitioners having taken the girl Billie into their house may have aided the object of the conspiracy, but they had no knowledge of the conspiracy and were not conspirators.

As in the case of defendant Falcone, petitioners are not charged with aiding and abetting the offense, since that count was dismissed (R. 56-7).

It is contended that the above decisions are applicable to petitioners and were misapplied here.

A further reason for allowance of the writ is that there is presented an important question in the administration of criminal justice. *Ballard v. U. S.* and *Bollenbach v. U. S., supra.*

This was a federal criminal prosecution. Assuming that the first assignment of error is decided against the contention of petitioners, and a conspiracy was in existence at the time of their first contact with the other defendants, the question remains whether petitioners joined the criminal partnership. That subject is of general in-

terest, not only for a Mann Act offense, but for the purposes of prosecutions under other federal criminal laws.

A holding that petitioners joined this conspiracy permits encompassing within the folds of the conspiracy dragnet those who shall touch in the slightest, or even gaze upon, the most distant orbit of the operations of a conspiracy. Doing so ignores well-settled requirements regarding proof of intent to participate in the offense charged.

3. THE APPELLATE COURT ERRED IN SANCTIONING THE TRIAL COURT'S CHARGE TO THE JURY. THEREFORE FEDERAL QUESTIONS WERE DECIDED IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, AND SUBSTANTIAL QUESTIONS IN REGARD TO THE ADMINISTRATION OF FEDERAL CRIMINAL PROCEDURE ARE THEREBY PRESENTED.

The objectionable features of the charge are set out *supra*, in the petition for writ of certiorari, pp. 4-5. They will be discussed in the order as there set forth.

(1) Reference to the requirement of transportation by common carrier was omitted. At the conclusion of the charge, in response to an objection by counsel (R. 86) the statute was read in its entirety (R. 87). But attention was not called to the transportation by common carrier element. The term was mentioned in an incidential fashion at pages 76 and 83 of the record. But at crucial points (R. 66 and 78) the point was omitted. The net result is that the requirement was never adequately fixed in the minds of the jury.

(2) The instruction that no rule of law is applicable and that the jury may find the duration of the conspiracy on the basis of their own experience and observation mis-

applies the prinicples of the Fiswick, Bollenbach, Falcone, Kissel, Brown, Logan, and Irvine cases, cited and discussed *supra,* under the first and second specifications.

Moreover, the effect of the instruction is to tell the jury that a continuing conspiracy was involved.

(3) Omitting to state that one defendant alone could be found guilty of conspiracy ignores the language of the indictment, which names "other persons to the Grand Jurors unknown" as co-conspirators (R. 2). This omission is particularly damaging because of the small amount of evidence respecting the alleged participation of petitioners as compared to that concerning other defendants.

(4) (5) It was prejudicial to state that the conduct of any of the conspirators might be considered as bearing upon the criminal intent of any or all.

The vice is that the instruction was not qualified in any way. The existence of a conspiracy and who are the participants must first be shown. Admissions made after its termination are admissible against the maker alone. *Brown v. U. S., Logan v. U. S.,* and *U. S. v Irvine, supra.* The instruction permits the jury to wander with unfettered license to gather implications from circumstantial evidence on a fundamental element of proof., e. g., intent to join the conspiracy.

(6) The instruction that whether the woman transported went of her own free will is immaterial prevented the jury considering that evidence in relation to whether or not a conspiracy ever existed, and whether the defendants had the criminal intent to transport her. The statute and the indictment (R. 3) state that the offense is to "knowingly" do certain acts, and the jury was entitled to consider the evidence on that point.

The effect of the charge, read in its entirety, is to leave the jury in a confused state on vital elements of the case, and to substantially prejudice petitioners in their fundamental rights.

This Court in *Bihn v. U. S., supra,* established certain rules regarding what constitutes a correct, concise and clear charge to the jury. It further established that the giving of such a charge is a matter of fundamental rights to the defendant.

The charge here misapplied the rules of that case and resulted in denial of a fair trial to petitioners. On the same authority petitioners contend that federal questions of importance in the administration of federal criminal justice are thereby presented.

CONCLUSION AND PRAYER

The United States Court of Appeals for the Sixth Circuit, in affirming without opinion the judgments of the trial court, committed errors in ruling that the conspiracy with which petitioners were charged had not terminated prior to the occurrence of any acts allegedly connecting them therewith and that a jury question was presented as to whether they had become members of the criminal partnership. Further error was committed in approving the charge of the trial court on vital elements of the case.

The rulings and approval of the charge decided federal questions in a way probably in conflict with applicable decisions of this Court, denied fundamental rights of petitioners, and present substantial questions in the administration of federal criminal justice.

Therefore, adequate reasons exist for issuance of a writ of certiorari to the United State Court of Appeals for the Sixth Circuit.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting a writ of certiorari as prayed, and thereafter reviewing and reversing the decision.

FITZGERALD, WALKER, CONLEY
& HOPPING,

LOUIS M. HOPPING,
2256 Penobscot Building,
Detroit 26, Michigan,
Counsel for Petitioners.

PETER L. LaDUKE,
2256 Penobscot Building,
Detroit 26, Michigan,
Of Counsel.

INDEX

CITATIONS

818714—48

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 437

BENJAMIN JOSEPH MILES AND MYRTLE LETT MILES, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The Court of Appeals did not render an opinion.

JURISDICTION

The judgment of the Court of Appeals was entered October 14, 1948 (R. 95). On November 8, 1948, Mr. Justice Reed extended the time for filing a petition for a writ of certiorari to and including November 30 (R. 97). The petition was filed November 29, 1948. The jurisdiction of this

Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence established that petitioners participated in the conspiracy prior to its termination.

2. Whether there was error in the trial court's instructions to the jury.

STATUTE INVOLVED

The Act of June 25, 1910, c. 395, 36 Stat. 825, 18 U. S. C. (1946 ed.) 398, 399, commonly known as the Mann Act, provided:

> SEC. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, * * * shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.
>
> SEC. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in

interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than five thousand dollars or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

The first count of an indictment returned in the District Court for the Eastern District of Michigan (R. 1–4) charged that on or about October 3, 1946, Ronald Woodling, alias Ronald Bradley, transported, caused to be transported, and aided and assisted in obtaining transportation for Loretta Ann McDonald from Detroit, Michigan, to Columbus, Ohio, for the purpose of prostitution, in violation of Section 2 of the Mann Act (R. 1). The second count charged that from October 1 to on or about October 3, 1946, Ronald Woodling,

Kay Woodling, alias Kay Nordberg, and petitioners conspired to violate Section 3 of the Mann Act by persuading, inducing and enticing Loretta McDonald to go from Detroit to Columbus for the purpose of prostitution, thereby causing her to be transported between those two cities as a passenger upon the route of a common carrier. Frank Glassman was named as a co-conspirator in this count but was not indicted. (R. 1–2.) The third count charged the same defendants with a substantive violation of Section 3 (R. 3–4).

The jury found Ronald Woodling guilty on all three counts, Kay Woodling guilty on counts 2 and 3, and petitioners guilty on count 2 (R. 5, 88). Petitioners were each sentenced to two years' imprisonment and fined $5,000 (R. 6, 7) and their convictions were affirmed on appeal, without opinion (R. 95).

Loretta Ann McDonald was a young girl, 16 years old, who, in June or July 1946, had been persuaded by Ronald Woodling to become a prostitute in Detroit (R. 13–15). Kay Woodling was a prostitute who married Ronald Woodling shortly after the offenses involved in this case (R. 35, 36, 45). Petitioners were the operators of a brothel in Columbus, a business in which they had been engaged for 40 years (R. 50, 52).

During the summer of 1946 Kay Woodling had been intimate with Frank Glassman, whose nickname was "Peck" (R. 37), and who was in the taxi business in Columbus (R. 35). Glassman

testified that some time during September of that year she told him that she was going to Chicago or Detroit and "go back into the racket" (R. 36). About October 1, 1946, Kay went from Detroit, where she was then living, to Columbus to see Glassman. She told him that she had met Ronald Woodling, that he was a nice fellow, and that if she could place a girl for Woodling he would give her an apartment in Detroit. She asked if Glassman knew Benny Miles and said "she would rather Benny had this girl because she wasn't very smart." (R. 35–36.) Kay returned to Detroit the same day and at about 9:00 p. m. she called Glassman and asked him to call Benny Miles "with reference to placing this girl for Ronnie." Glassman called Miles and told him that "a girl named Kay from Detroit called and said she would like to place a girl." Miles told Glassman, "Okay, send her; but first she will have to have a physical." At the same time Miles gave Glassman his address as 2440 Groveport Pike, Columbus. About a half hour later Kay called Glassman again and he told her that Miles had said, "okay, send her." (R. 36–37.)

On October 2, Ronald Woodling told Loretta McDonald that she was going to Columbus, Ohio, the following day. That night he gave her $10 for train fare and a slip of paper on which was written, "Benny Miles, 2440 Groveport Pike," and a phone number, together with a message Loretta was to give Miles; the message was, "I'm

Billie. Peck sent me." Woodling put Loretta on the train at the Michigan Central Station in Detroit on October 3 at 1 p. m. She arrived in Columbus about 6:30 and went directly to the address given on the slip of paper. There she was met by petitioner Myrtle Miles, who admitted her, saying, "Come in, we have been expecting you, Billie."[1] Benjamin Miles told Loretta that he had not expected her for twelve hours and asked why she had not gone to "Peck's place." Myrtle Miles told Loretta at this time that there was another girl from Detroit at the house and introduced her to the girl. (R. 15–17.) Both petitioners explained to Loretta what prices were charged to the patrons of the house and that certain old customers, referred to as "neighbors," were entitled to the rate of $3. They also explained the method by which the fees obtained were to be divided. (R. 18.)

The following day, Friday, October 4, Loretta went to the office of one Dr. Brown, where she was examined and given a slip of paper which she gave to Benjamin Miles. She worked at petitioners' house until the following Tuesday, which was her day off. Petitioners warned her not to tell customers that she was "from out of the State of Ohio as one of the men might be an F. B. I. man or one of them might start talking to them."

[1] In accordance with her instructions from Woodling, Loretta destroyed the paper after her arrival at petitioners' house (R. 15).

Loretta was not permitted to make a long distance telephone call to Ronald Woodling from petitioners' house, "because the Federals might trace the call." (R. 18.)

Petitioners also told Loretta that "the cops were hot on their trail" and that they were going to close on Tuesday. Loretta called Ronald Woodling and he later went to Columbus, picked her up at petitioners' house, and placed her in the house of Bobby Adams in Columbus, where she worked for one night. (R. 19.)

ARGUMENT

1. Petitioners contend (Pet. 22–29) that the substantive offense of inducing Loretta McDonald to go from Detroit to Columbus for the purpose of prostitution was complete the moment Loretta crossed the Michigan-Ohio line on October 3, 1946; that the conspiracy therefore terminated at the same time; that the evidence showed that their first contact with the other conspirators was the phone call from Glassman and that this occurred after Loretta had crossed the state line; *ergo,* that the proof was insufficient to establish that they joined or participated in an existing conspiracy.

The legal premise of this argument is, of course, untenable, for the conspiracy continued at least until Loretta arrived at her destination—petitioners' brothel in Columbus—and we assume that petitioners would concede that the proof showed they joined the conspiracy before that time.

The factual premise of the contention is negated by the record. It is pitched upon petitioner Benjamin Miles' pre-trial statement to agents of the F. B. I., which was introduced by the Government, that Loretta arrived at his brothel the "same evening" that Miles received the telephone call from Glassman asking if he could use a girl (R. 52). Petitioners argue that since Glassman in his testimony did not fix the exact date of the call, and since Loretta left Detroit at 1:00 p. m. on October 3, it must be taken as established by Miles' statement that she had already crossed the state line, one hour travel time from Detroit, before Glassman called him (Pet. 23–24). It is true that Glassman testified that his conversations with Kay Woodling in Columbus and by phone in Detroit and his call to Miles at Kay's request (see p. 5, *supra*) occurred "around the first of October 1946" (R. 36). But the chronology of events as related by Glassman and Loretta McDonald—Kay Woodling's statement to Glassman in Columbus that she wanted to place a girl for Ronald Woodling and preferred to place her in Benny Miles' house; Kay's call later the same day after she had returned to Detroit asking Glassman to call Miles; Glassman's ensuing telephone conversation with Miles when Glassman said that "Kay" had called from Detroit and wanted to place a girl and Miles said to "send her"; Ronald Woodling's statements to Loretta in Detroit on October 2 that she was going to Colum-

bus the next day and his action in dispatching her on October 3 with a note bearing Miles' address and telephone number and the message, "Peck [Glassman] sent me"; petitioner Myrtle Miles' statement to Loretta upon her arrival that they had been expecting her, and her introduction to "another girl from Detroit" who was at petitioners' house—all point inevitably to the conclusion that Glassman's call to Miles and Miles' agreement to take Loretta into his brothel occurred on October 1 or 2, before she left Detroit. Indeed, petitioners' prior agreement was indispensable to the consummation of the Woodlings' plan to place Loretta in petitioners' house. The evidence plainly shows that petitioners knew Loretta was coming and whence she came; that they became parties to the conspiracy to send Loretta to Columbus to engage in prostitution almost at its inception.[2]

[2] In this connection, petitioners complain of testimony concerning acts and declarations which occurred after October 3, 1946 (Pet. 26). Loretta McDonald's testimony that petitioner Myrtle Miles told her immediately upon her arrival on October 3 that there was another girl from Detroit at the house (*supra*, p. 6), which petitioners include among the allegedly inadmissible evidence, was clearly admissible as showing petitioners' knowledge that Loretta had come from Detroit pursuant to the conspiracy. Loretta's testimony that petitioners later cautioned her about telling patrons that she was from out of the State and that she was not permitted to use the telephone to call Woodling in Detroit because the call might be traced was also admissible as showing petitioners' knowledge and intent. See *Kulp* v. *United States*, 210 Fed. 249 (C. C. A. 3). However, this latter testimony,

2. Isolating six paragraphs from the trial court's charge to the jury of approximately twenty-eight pages, petitioners contend that they embody five fundamental errors of law which resulted in denying them a fair trial (Pet. 4–5, 29–31). But petitioners did not make any such objections at the conclusion of the court's initial charge nor at the conclusion of the supplementary charge given as a result of suggestions by counsel for the other defendants (see R. 85–86, 87); their present contentions, therefore, come too late. Rule 30, F. R. Crim. P.; *United States* v. *Monroe*, 164 F. 2d 471 (C. C. A. 2); *United States* v. *Wilson*, 154 F. 2d 802 (C. C. A. 2); *Cave* v. *United States*, 159 F. 2d 464 (C. C. A. 8).

In any event, petitioners' criticisms of the charge are without merit.

They complain that the court omitted any reference to the requirement of transportation by common carrier. The objection is frivolous, for the court instructed the jury that it had been stipulated that the New York Central railroad

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as well as evidence concerning Loretta's visit to the doctor on October 4, 1946, her quarrel with another girl at petitioners' house (R. 19), the termination of her stay at the house, and her subsequent employment at Bobby Adams' house, was withdrawn from the jury's consideration on the issue of petitioners' guilt on the conspiracy count by the court's instruction that the jury was not to consider as against them "any evidence relating to events which occurred prior to October 1, 1946, nor subsequent to October 3, 1946" (R. 82).

is a common carrier.[3] A few paragraphs later the court alluded to the transportation element of the conspiracy count, stating that the case involved a conspiracy to induce the transportation for immoral purposes, and "That is the first element, an object to be accomplished" (R. 66). The supplemental charge also specifically covered this point. After reading Section 3 of the Mann Act, 18 U. S. C. 399, in its entirety, the court said (R. 87):

> Also I charge you that it is unnecessary to show control of the medium of transportation by the different members of the conspiracy. It is sufficient if the co-conspirators knew or should have known that interstate transportation by common carrier would reasonably result and if it does.

Petitioners contend that the portion of the charge in which the jury was instructed concerning the duration of a conspiracy constituted prejudicial error in view of the legal principles announced by this Court in previous cases. While the court charged that a conspiracy continues until consummated or until the accomplishment

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[3] The charge in this regard reads (R. 66): "Now, it has been agreed upon here that the New York Central Railroad is a common carrier, and no proof was submitted, except the stipulation of counsel. It that a correct statement?

"Mr. Thornton: Yes, Your Honor.

"Mr. Hopping [counsel for petitioners]: Yes, Your Honor.

"Mr. Comb: Yes, Sir."

of its object and that the question is one of fact to be resolved by common sense and human observation and experience, the jury were also instructed that all evidence relating to events which occurred prior to October 1, 1946, and subsequent to October 3, 1946, was not to be considered as against petitioners in determining their guilt or innocence on the conspiracy count (R. 82). Thus, petitioners have no basis for complaint, since under this instruction the jury was not permitted to consider evidence of incidents which occurred after the day Loretta McDonald reached the destination of her interstate journey, i. e., petitioners' brothel.

Petitioners assert that the trial court erred in neglecting to instruct the jury that one defendant alone could be found guilty on the conspiracy count,[4] since the count also referred to "other persons to the Grand Jurors unknown" (R. 2). But in view of the fact that there were four defendants on trial on the conspiracy count and all were convicted, it is difficult to understand how the charge in this respect could have resulted in any detriment to either petitioner. Under the charge as given, the jury could have acquitted either or both of the petitioners if they had thought it proper.

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[4] The court's specific instruction on this score was as follows (R. 85):

"The second count is a conspiracy charge. You can find all of the defendants guilty. Your verdict can be that they are all guilty, or none guilty; or that two or more are guilty."

Petitioners have construed two sentences of the charge to mean that the jury were told that the conduct of any of the conspirators might be considered as bearing upon the criminal intent of any and all. This is not only a misconstruction of the fair meaning of the language employed in the two sentences to which reference is made (Pet. 4–5), but it also ignores other portions of the instructions relating to criminal intent (R. 69–70, 75). The wording of the two challenged sentences, when considered with other portions of the charge, can have no other meaning than that the acts, conduct, declarations, and admissions of each defendant might be considered to establish intent as to the defendant who performed the acts or made the declarations or admissions. Furthermore, when the charge is considered in its entirety it is apparent that the jury were fully instructed as to the importance of criminal intent and the manner in which it could be determined. The jury were told there must be criminal intent to violate the law, that intent might be established by circumstantial evidence, that there must be a concurrence of acts and intent, and that they were to "consider all these facts and circumstances of the case which touch the conduct of the particular defendant or defendants, as well as all the evidence introduced by the Government concerning any of the defendants' declarations or admissions, if believed by you and sufficiently proven." (R. 75.)

Finally, petitioners contend that it was prejudicial to charge the jury that it was immaterial whether Loretta McDonald went to Columbus of her own free will. But this was a correct statement of the law. See e. g., *United States* v. *Reed,* 96 F. 2d 785 (C. C. A. 2), certiorari denied, 305 U. S. 612; *United States* v. *Reginelli,* 133 F. 2d 595 (C. C. A. 3), certiorari denied, 318 U. S. 783.

CONCLUSION

The judgment below is correct and the case presents no conflict of decisions. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
ALEXANDER M. CAMPBELL,
Assistant Attorney General.
ROBERT S. ERDAHL,
JAMES W. KNAPP,
Attorneys.

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